

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In re Ex Parte Presentations and Extension of	)	
Certain Deadlines Regarding the 800 MHz	)	WT Docket
Public Safety Interference Proceeding	)	No. 02-55
	)	

**COMMENTS OF MOTIENT CORPORATION**

Motient Corporation (“Motient”) by counsel and pursuant to the Commission’s Public Notice of October 22, 2004 (FCC 04-253), hereby submits its comments regarding the above referenced matter.

**I. OVERVIEW**

As an operator of two-way mobile communications services to businesses and enterprises in the lower 800 MHz band, Motient and its 150,000 subscribers have a vital interest in this proceeding. Particularly, some outcomes in this proceeding could change the expectations Motient had regarding its ability to use the spectrum when it became a licensee and launched its business. Moreover, these proposed changes could have a devastating impact on Motient’s ability to adopt new technologies and remain competitive in the quickly changing marketplace for two-way mobile communications. In turn, this could limit options available to Motient customers or prematurely strand those customers with obsolete equipment. It is for these reasons that Motient has been active in WT Docket No. 02-55.

The issues raised in this proceeding are vital to the future of Motient. However, the Commission’s recent Report and Order in WT Docket No. 02-55<sup>1</sup> and the Nextel Ex Parte

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<sup>1</sup> See Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, Order, FCC 04-168, released August 6, 2004. (800 MHz Public Safety Order).

proposal,<sup>2</sup> do not address how Motient will be accommodated in the Re-banded 800 MHz band. Specifically, neither the Report and Order nor the Nextel Ex Parte proposal specifies what spectrum Motient would be able to relocate to.

The Commission also has a vital interest in this proceeding—assuring that 800 MHz public safety radio systems do not receive unacceptable levels of interference from ESMR and cellular systems. Indeed, this was one of the seminal underlying public policy goals of this entire proceeding. Failing to relocate Motient from its current location in the band is inconsistent with this goal and runs the risk of leaving a potential future cause of interference in the band that is otherwise free of such causes. The Commission’s failure to deal with this potential problem now may require the Commission to readdress this issue in the future. Better for all concerned, including the Commission, to resolve all these issues consistently and simultaneously.

For the reasons set forth below, Motient submits that it should be entitled to relocate into “Guardband” spectrum at 861-862 MHz in all markets where it is licensed, subject to the terms set forth herein.

## **II. MOTIENT’S STATUS AS A 800 MHZ LICENSEE AND INTEREST IN THIS PROCEEDING**

### **A. Motient Needs to Re-band in Order to be Competitive**

Motient is a nationwide provider of wireless interconnectivity services for businesses and individuals. It is currently serving over 150,000 subscribers. Motient’s services include wireless email, data, telemetry, field service and other mobile wireless products. As the Commission’s records reflect, Motient is licensed to operate within the 800 MHz band in hundreds of markets, on a site-specific basis, across the country. Motient operates in a highly competitive market that

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<sup>2</sup> See Nextel Communications, Inc. (“Nextel”) Ex Parte filing in WT Docket No. 02-55, September 16, 2004.

includes a number of the large mobile service providers some of which will benefit from the adoption of the Re-banding proposal.

The overriding issues that the Commission is seeking to resolve in this proceeding are not the result of any actions on the part of Motient, either directly or indirectly. When Motient was licensed by the Commission, it understood the rules and the environment governing the spectrum for which it would be licensed. It has accepted and abided by those rules and launched and coordinated its business accordingly. The Re-banding effort now contemplated would dramatically change the spectrum landscape for Motient. Under the relocation plans currently being considered by the Commission, Nextel and perhaps other 800 MHz commercial wireless service providers that operate licenses in the 800 MHz band will be relocated to the upper part of the band. This result would leave Motient as the only nationwide commercial user left in the lower part of the 800 MHz band. This situation would be a dramatic change in the environment that existed when Motient originally obtained its licenses and the current owners acquired Motient and would be at odds with the underlying public policy goal of this proceeding—assuring 800 MHz public safety radio systems do not receive unacceptable levels of interference from commercial ESMR and cellular systems.

These changes create a number of difficult operational and competitive issues for Motient. Specifically, Motient's ability to upgrade and modernize its network could be significantly impaired in an environment where it is surrounded by public safety users. Public safety licensees operate and manage their networks with different exigencies than a nationwide commercial entity like Motient. As the Commission is well aware, public safety licensees have a somewhat different reliability factor than commercial licensees. If Motient were to attempt to upgrade its network, it would be hamstrung by the significant limits on interference that public

safety users are able to accept, limiting Motient's ability to migrate to new technology and offer its customers new and innovative services. For instance, any new technologies that are developed for the upper band would be designed for commercial entities who have migrated to the upper band. Given the public policy goals underlying this proceeding and requiring the migration, new technology for commercial users in the upper band will be designed to filter out lower band frequencies from a transmit or receive perspective in order to prevent interference to public safety services. Certainly, given all the effort the FCC has devoted to this proceeding, it is reasonable to assume that the Commission will continue to seek to protect the public safety services from interference from commercial users. If new technology for upper band commercial users contains specialized filtering, this same technology may not be usable by Motient if it remains located in the lower part of the band. This situation would severely retard Motient's ability to introduce new technologies and services. This is a burden that licensees who migrate to the upper 800 MHz band will not need to bear, putting Motient at a significant competitive disadvantage.

Furthermore, if Motient is required to stay in the lower part of the band, it would restrict its ability to aggregate spectrum, deploy frequency agile and/or digital transmitters, buy and sell spectrum, relocate transmit sites, utilize other similar networks, etc. Again, those licensees who migrate to the upper part of the band would not be similarly restricted in the way they use the spectrum.

This new environment, through no fault of its own, would put Motient at a competitive disadvantage vis-à-vis other operators that are allowed to migrate to the upper part of 800 MHz band. As a commercial entity, it is critically important that Motient be afforded the same treatment and options as are being offered to other commercial entities, including Nextel.

Likewise, as the Commission considers shuffling the deck in the 800 MHz band, it needs to be careful to insure that all licensees are treated in an equitable manner and that expectations of all licensees when they entered the band are not adversely affected. To do otherwise would be inequitable and inconsistent with the public policy goals underlying the Re-banding plan. More importantly, it would be wholly inconsistent with the Communications Act of 1934.<sup>3</sup> As discussed below, there is no reason to create this disparity and to disrupt expectations because most of Motient's needs can be accommodated in the guardband.

**B. Motient's Proposal to Migrate to the Guardband**

At the heart of Motient's request is that the Commission provide it with the ability to relocate, on a frequency-for-frequency basis, into the Guardband spectrum at 861-862 MHz in all markets where spectrum is available for such relocation after taking into consideration the spectrum needs of Nextel, Southern LINC and other of the largest ESMR carriers on the same terms and conditions that all other licensees are relocating.<sup>4</sup> Additionally, to the extent possible, Motient also seeks a right to relocate to a common frequency.

In conjunction with Motient's relocation to the upper 800 MHz band, relocation expenses will be handled in the very same manner as the relocation of other (non-Nextel) entities. In particular, if other commercial licensees are permitted to relocate to the upper 800 MHz band, and the expenses of such relocation are imposed on a third party, then the expenses associated with Motient's relocation should be similarly imposed. However, in order to avoid imposing any new financial burdens, Motient does not object if the costs to Nextel are capped with respect to

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<sup>3</sup> 47 U.S.C. § 1 *et seq.*

<sup>4</sup> Motient is on record as having pointed out certain complications, including available frequency considerations, associated with its being able to relocate into Guardband spectrum. Notwithstanding those, having a right to relocated in the Guardband, even if such right is not able to be fully realized, would be a vast improvement over Motient being forced to remain in its currant spectrum location.

the cost of Motient's retuning. Specifically, if the costs of relocating Motient combined with the costs associated with other spectrum Re-banding cause the total Re-banding cost to exceed the total amount pledged by Nextel pursuant to the Consensus Plan, Motient would be responsible for reimbursing Nextel only for the costs of Re-banding Motient.

### **III. THE PUBLIC INTEREST WILL BE SERVED BY ALLOWING MOTIENT TO MIGRATE TO THE GUARDBAND**

Grant of the clarification sought herein will serve the public interest in a number of ways. First, it removes certain of the ambiguity now existing in the Report and Order. Second, it will provide fair and equal treatment to Motient – an established carrier with a long record of providing service to the public on an interference free basis – vis-à-vis other competitive nationwide carriers. It is important to note that this clarification can be accomplished without overloading spectrum or otherwise violating the Commission's carefully crafted Re-banding plan. In the vast majority of its markets, Motient has only one frequency. Even in the handful of markets where it has additional spectrum, it has no more than three channels (except in New York, Chicago and San Francisco, where it has between six and eleven channels). As a result, Motient's proposal is not spectrum intense and will cause minimum disruption.

Third, grant of the relief requested herein would not require the Commission to make any corresponding changes for other licenses, since Motient is uniquely situated as the only non-ESMR 800 MHz carrier providing nationwide commercial service. Thus, the relief herein sought removes inconsistencies resulting from the plan while creating no new ones.

Finally, the guardband migration resolution proposed in these comments would promote the underlying public policy goals of this entire proceeding. Specifically, this proceeding was initiated to eliminate the unacceptable interference problems caused by ESMR and cellular systems to 800 MHz public safety systems. Moving Motient to the guardband would promote

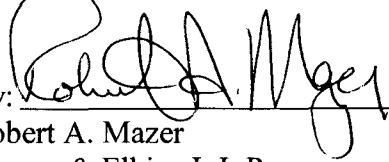
this goal and eliminate a potential future problem which would require the FCC to readdress this issue.

**IV. CONCLUSION**

For the reasons discussed above, Motient respectfully requests that the Commission adopt the clarification to the Nextel proposal as described herein.

Respectfully Submitted,

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